

A RESOLUTION to amend the Comprehensive Plan and Basin Regulations - Water Supply Charges regarding the termination of certificates of entitlement.

WHEREAS, in May 1974 the Commission adopted Resolution No. 74-6 which imposed water charges on diversions or withdrawals of surface water from the Delaware River Basin; and

WHEREAS, the water charge regulation exempted diversions or withdrawals that were legally permissible prior to the 1961 adoption of the Delaware River Basin Compact and surface water users exempted because of their pre-Compact status were issued certificates of entitlement; and

WHEREAS, Resolution No. 74-6 further provided that certificates of entitlement would be terminated when transferred with certain specified exceptions; and

WHEREAS, existing Commission policy, which provides for termination when there is a transfer of ownership and/or control, has been ruled inconsistent with the wording of Resolution No. 74-6; and

WHEREAS, the Commission is now proposing to amend its Basin Regulations - Water Supply Charges so that transfer exceptions are consistent with existing Commission policy to terminate certificates of entitlement when a transfer of ownership and/or control of a water using facility occurs; and

WHEREAS, the proposed amendments would 1) define "transfer", 2) delete two categories of exemptions from the existing rule that terminates certificates of entitlement upon transfer and 3) revise a third such category; and

WHEREAS, the Commission held a public hearing on October 26, 1994 on the proposed amendments and has reviewed and considered testimony from water users and other interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

I. The Comprehensive Plan and Basin Regulations - Water Supply Charges are hereby amended as follows:

1. Section 5.2.1D. of the Basin Regulations - Water Supply Charges is amended to read as follows:

- D. A certificate of entitlement is not transferable, except as provided in paragraphs E. and F. of this section. For the purposes of this section, "transfer" shall mean any sale or other conveyance by a holder of a certificate of entitlement involving a specific facility and shall include any transfer which results in a change of ownership and/or control of the facility or of the stock, or other indicia of ownership of a corporation which holds title to the facility.
2. Section 5.2.1F. of the Basin Regulations - Water Supply Charges is amended to read as follows:
- F. A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:
- (1) whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation; that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation; or
  - (2) where such transfer is merely a result of a change of the name, identity, internal corporate structure or place of organization of a corporate holder of a certificate of entitlement and does not affect ownership and/or control.

II. These amendments shall be effective immediately.

/s/ Daniel J. Campbell  
Daniel J. Campbell, Chairman pro tem

/s/ Susan M. Weisman  
Susan M. Weisman, Secretary

ADOPTED: December 7, 1994